

CLAIM CONSTRUCTION HEARING

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 TYLER DIVISION

4 ADJUSTACAM, LLC)(
5)(CIVIL DOCKET NO.
6)(6:10-CV-329
7 VS.)(TYLER, TEXAS
8)(
9)(FEBRUARY 9, 2012
10 AMAZON.COM, INC., ET AL.)(9:00 A.M.

11 CLAIM CONSTRUCTION HEARING
12 BEFORE THE HONORABLE JUDGE JOHN D. LOVE
13 UNITED STATES MAGISTRATE JUDGE
14

15 APPEARANCES:

16
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19 FOR THE DEFENDANTS: (See Attorney Sign-In Sheet)

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1 COURTROOM CLERK: All rise.

2 THE COURT: Please be seated.

3 All right. Ms. Morris, you may call the
4 case.

5 COURTROOM CLERK: The Court calls Case No.
6 6:10-CV-329, Adjustacam versus Amazon.com, et al.

7 THE COURT: Announcements.

8 MR. SPANGLER: Good morning. Andrew
9 Spangler on behalf of the Plaintiff. With me today is
10 Mr. John Edmonds and Mr. Johnathan --

11 MR. YAZDANI: Yazdani.

12 MR. SPANGLER: -- Yazdani, yes. And we're
13 ready, Your Honor.

14 THE COURT: All right. And for the
15 Defendants?

16 MR. CRAFT: Morning, Your Honor, Brian
17 Craft. I'm here on behalf of Amazon.com with Jacqueline
18 Lu, Steve Daniels, here on behalf of Best Buy entities,
19 CDW, Fry's Electronics, Hewlett Packard Company, Micro
20 Electronics, and Office Depot.

21 THE COURT: Okay.

22 MR. HAMMOND: Herbert Hammond on behalf of
23 Gear Head.

24 MR. SMITH: Michael Smith on behalf of
25 Wal-Mart.

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1 MR. YARBROUGH: Trey Yarbrough, Your Honor,
2 on behalf of the Newegg Defendants and Rosewill. And
3 John Zarian, as well. Mr. Zarian will be arguing some
4 of the disputed terms.

5 THE COURT: All right. Thank you.

6 We're here, of course, for claim
7 construction hearing. As the -- I'm sure you probably
8 know, the way I want to approach this is to take this
9 term-by-term. I don't think there's, in this context,
10 really any necessity of any general tutorial of any
11 kind. I think you can just jump right into the terms.
12 And we'll go back and forth on the -- term-by-term.

13 Let me, though, before we begin just kind of
14 get a clear understanding of what terms are in dispute
15 going forward here. I'll just go kind of down the list.
16 I understand, I guess, that -- I'll just list them off,
17 that hinge member, rotatably attached terms,
18 disposition, support frame, I think these are the four
19 that I'm fairly certain are in dispute. Are there any
20 other terms in dispute? And I'm going off of what the
21 Defendants briefed. Support frame, disposition, hinge
22 member, and rotatably attached. Any other term in
23 dispute?

24 MS. LU: No, Your Honor.

25 THE COURT: Okay. Just those four?

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1 MR. EDMONDS: No, Your Honor. I mean, there
2 are -- there are a number of agreements that may not be
3 reflected in the chart we gave you --

4 THE COURT: Okay.

5 MR. EDMONDS: -- in terms of plain meaning,
6 but those are the ones in dispute.

7 THE COURT: So that I'm understanding, then,
8 those terms which are originally in dispute, is there
9 agreement as to plain meaning? Is that what I'm
10 understanding, or is there an agreement --

11 MS. LU: That's right.

12 THE COURT: Okay. All right. So with those
13 four terms in dispute, then let's begin, and I'll leave
14 it up to the parties as far as how they would like to do
15 the order of terms. As always, just keep in mind your
16 time. I don't think this hearing should take too long
17 with the disputed terms in dispute, but my typical
18 advice is to prioritize the most important terms first
19 to the parties.

20 So let me hear first from the Plaintiff.

21 MR. ZARIAN: Well, if it please the Court,
22 Your Honor, counsel conferred before the hearing and had
23 proposed and agreed that the -- that the following order
24 of terms be -- be discussed, support frame, then
25 dispossession, then hinge member, then rotatably

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1 attached, essentially in the order they were presented
2 in the briefing, Your Honor.

3 THE COURT: Okay. That's fine. Okay.
4 Support frame, then. Go ahead.

5 MR. EDMONDS: Thank you, Your Honor, John
6 Edmonds here for the Plaintiff.

7 And let me make one correction to what we
8 said. In terms of the -- the agreements on plain
9 meaning, there's one element, hingedly attached, that
10 the parties agreed on a construction. It was connected
11 or joined via a hinge joint. I believe the rest of
12 them we stated correctly had been agreed to be plain
13 meaning.

14 THE COURT: Okay. Connected or joined via a
15 hinge --

16 MR. EDMONDS: Joint, Your Honor.

17 THE COURT: -- joint or point?

18 MR. EDMONDS: Joint. Is there a -- if
19 there's a typo, it should be joint.

20 THE COURT: It may be -- it may be just in
21 our -- what we put together. Okay. Go ahead.

22 MR. EDMONDS: So -- and by the way, I think
23 hinge member is probably the most important term, but
24 the Defendants' presentation was done in a different
25 way, so we're going to do it that way, which is fine.

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1 And the first term that they want to do
2 is -- make sure I get their order correct here. Okay.
3 The support frame. So, Your Honor, a -- a support frame
4 is, we say, a very simple term, that in general, the
5 Defendants are trying to read extra limitations into
6 this element, and I -- and I think even though we're
7 going to do it one at a time, I think it's important for
8 the Court to understand the -- the combination, kind of
9 the one-two punch they're trying with support frame and
10 disposition, because they have the word -- in support
11 frame, they have the word disposition.

12 So when they have a construction of
13 disposition, they're -- they're trying to import that
14 into a support frame. And as -- in terms of the
15 Plaintiff's construction of support frame, we say it's a
16 structural element that supports a hinge member.
17 We're -- we're somewhat close to the Defendants in that
18 we agree that it supports a hinge member. That seems to
19 be an agreement.

20 But the -- the point of disagreement is that
21 whether the different dispositions have to be what
22 enable the support of the hinge member or whether the
23 support frame is just simply what supports the hinge
24 member.

25 And in -- in that regard, we can look at

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1 Claim 1, and as you can see with Claim 1, Element B, we
2 have the support frame is rotatably attached to the
3 hinge member, and it's configured to support it. The --
4 the Plaintiff says that that's all that's required by
5 this simple term, that's all that's required by a very
6 straightforward language in the claim.

7 What I see the Defendants saying is that the
8 Plaintiff's definition lacks context, but we disagree.
9 The context is provided within the claim itself, and
10 if -- what I'll do is I think our -- I think our
11 construction is fairly straightforward. So I'll pick
12 apart theirs, which I think frames the issues somewhat
13 better for the Court.

14 The Defendants say that a support frame --
15 the different dispositions must be what enables support,
16 and then when they talk about disposition, they say that
17 that has to be something that's done in the second axis
18 of rotation. So what they're trying to do is they're
19 trying to limit a support frame to something where
20 rotation in a second axis is the only thing that must be
21 the thing that enables support of -- of the hinge
22 member. And that's just simply not required by these
23 claims.

24 That -- that may very well be an aspect of a
25 preferred embodiment, but as the Phillips case teaches

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1 us, and many other cases teaches us, as the Court is
2 well aware, claims are not limited to their preferred
3 embodiments.

4 The -- the Defendants say that we need more
5 physical structure in the construction. The problem
6 with that argument is their construction doesn't provide
7 additional structure. All it's doing is putting in
8 additional limitation -- importing additional limitation
9 into this element.

10 So as I see it -- can I get the one with the
11 colors on it -- this is kind of a colored version of
12 Claim 1, and it gives kind of a better explanation of
13 what's happening here so the Court can better understand
14 it. We have a -- it's a -- it's a camera clip. The
15 hinge member is attached to the camera, and the claim
16 requires that it rotates around a first axis of rotation
17 relative to the hinge member. Then we have -- we have
18 our hinge member attached to a camera, now we have a
19 support frame that's attached to the hinge member.

20 So to us, the structure is clear of what's
21 required in this claim, as they -- the old saying the
22 leg bone connected to the hip bone and the hip bone
23 connected to the thigh bone. Here we have a hinge
24 member that's attached to the camera; we have a support
25 frame that's attached to the hinge member. And then the

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1 claim goes on to talk about how the hinge member, how
2 it -- how it rotates around a second axis -- axis of
3 rotation relative to the support frame.

4 And as the Court -- I don't want to go
5 through every element here, but I think the pictures
6 illustrate that in -- as claimed, we have the two
7 different dispositions here that are required by the
8 claim. One is relative to the surface, and one is
9 relative to the object. But those are already in the
10 claim.

11 As -- as we see it, if you take the
12 Defendants' restrictive construction, the claim now
13 becomes more limited than -- than it is already
14 structurally, and I think it's just a -- it's just a
15 non-infringement argument they're trying to make and an
16 improper claim construction in terms of what -- what the
17 Court should do.

18 The -- there's a lot of citations they have
19 to -- you have to have structure and you have to have
20 context, but what we'd say to the Court is carefully
21 read Claim 1 or Claim -- any of the -- any of the
22 independent claims, Claim 19 or Claim 20. It's clear
23 from these straightforward claims what the structure is.
24 You have the hinge member that's attached to a camera,
25 you have a support frame that's attached to the hinge

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1 member. The support frame attaches the hinge member,
2 which is what is rotatably attached to the camera.

3 So the structure is there. It's very
4 straightforward, and what -- what the Defendants are
5 trying to do is not to put additional structure in.
6 They're just trying to limit the claim in a very
7 restrictive way. If you -- if you limited this to the
8 rotation about a second axis of rotation it must be what
9 enables support of the camera, then that's a very
10 restrictive -- unduly restrictive interpretation of this
11 claim, and we say that the fact that the camera is
12 attached to the hinge member and that the hinge member
13 is attached to the support frame is what -- all you need
14 is -- all you need to support is to attach.

15 There's no need to -- to say that I have to
16 move it in a single direction to enable support. It
17 only needs to be attached. I think that's the -- the
18 gist of our argument there, and I think it's as simple
19 as that.

20 You know, the Defendants have a lot of
21 slides here, a whole lot of slides. We just got them,
22 so we're kind of working through them, but, you know,
23 it's remarkable how much argument, how many slides, how
24 many cites it takes here to have the Court construe a
25 very straightforward term in a very straightforward

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1 context, and we respectfully submit that any argument
2 that this -- is this long and contorted and any argument
3 that is so dependent upon the preferred embodiments as
4 opposed to the straightforward claim language is
5 inevitably wrong, which is the case we have here.

6 Thank you, Your Honor.

7 THE COURT: Well, let me -- let me ask
8 before I go to the Defendants, I don't at all disagree
9 with what you're saying, in other words, that the
10 support frame supports. You know, that seems fairly
11 straightforward.

12 I guess my only question would be the
13 Defendants say, whose different disposition enable
14 support of said hinge member. Now, just kind of explain
15 to me why that is unacceptable to the Plaintiff. You
16 know, what do you see is that -- what does that
17 ultimately mean? How does that ultimately work itself
18 out?

19 MR. EDMONDS: Here's how --

20 THE COURT: Yeah, go ahead.

21 MR. EDMONDS: Thank you, Your Honor.

22 So as -- as the claim is structured, you
23 have a support frame that -- that is attached to the
24 hinge member supporting it, and the hinge member
25 supports the camera. There -- there are also separate

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1 claim elements that cover the rotation and -- and -- or
2 the disposition of the support frame, and what's one of
3 the novel aspects of these claims is, as you can see
4 from the illustration, in one disposition, the -- the
5 support frame has -- as claimed has to have a first
6 disposition on the surface, which is the one that you
7 see sitting on the blue there, and then it has a second
8 disposition when attached to an object, which is what
9 you see at the bottom there.

10 So the -- the problem we have with the
11 Defendants' construction is that as I read it, because
12 they're using the word disposition in their construction
13 of support frame and because they limit disposition to
14 rotation about a single axis, what they're trying to do
15 is to now argue to the jury based upon that construction
16 that the -- these claims require that the only way that
17 the support frame can be attached to the hinge member is
18 that the rotation about a second axis is what must
19 enable that, and that's just simply a very restrictive
20 reading of it. There's no requirement that the
21 disposition be what enable the support. The attachment
22 itself can enable the support regardless of the
23 disposition of the camera.

24 THE COURT: Okay.

25 MR. EDMONDS: Thank you, Your Honor.

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1 THE COURT: All right. Response?

2 MS. LU: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MS. LU: So you just heard Plaintiff's
5 explanation for what their construction of support frame
6 is and why they think that's correct. Defendants
7 disagree. Defendants will tell you that and demonstrate
8 that Plaintiff's construction lacks context.

9 And Your Honor asked an excellent question
10 just now, what is it about including the word
11 disposition that's unacceptable or incompatible somehow
12 with the finding of what a support frame is in this
13 context, and the Defendants agree, that is an excellent
14 point. And as we will show you, the two have to be
15 related, and if Your Honor will permit, because
16 disposition is also a disputed term and Defendants are
17 of the position that the two terms have to be related
18 structurally to what it means to have a support frame in
19 the claims, if it would be permitted by Your Honor, we'd
20 like to go ahead and present the arguments for
21 disposition and support frame together just because they
22 flow together logically.

23 THE COURT: That's fine with me. I'll allow
24 the Plaintiff to respond back to support frame and then
25 respond to disposition, as well.

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1 So go ahead.

2 MS. LU: Okay. Thank you, Your Honor.

3 So, first of all, we just looked at the
4 claims. We saw a lot of colored boxes highlighting
5 specific words in the claim, but let's not forget what
6 the claim and really the patent here is about. The
7 entire patent is about a camera clip, not the camera,
8 just the clip part of the camera, and this clip is used
9 to support the camera on different surfaces. You can
10 put it on a desk, you can put it on top of a screen.

11 And the four terms that the parties are
12 disputing all have something to do with the clip. The
13 clip is a device that fulfills a function, and all these
14 terms relate to that device and its function. So the
15 disagreement really between the parties underlying all
16 four terms, and it will become clear as we go through
17 each of these, is that should the disputed terms be
18 construed to take into account the relationship to the
19 entire functioning device, the entire clip or not?

20 Now, Defendants would say, yes, and the
21 reason is -- I think becomes pretty clear when we look
22 at what the terms actually are. So two of the terms are
23 support frame and hinge member, and what these actually
24 are in the clip are its pieces. Just for convenience,
25 we have here a visualization of that, a figure taken out

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1 straight from the patent, the hinge member here, and the
2 Plaintiff has also already highlighted this in their own
3 version of the diagram, but we used a different color
4 scheme. It's highlighted here in blue, and the support
5 frame is highlighted here in red.

6 So these are physical pieces. The support
7 frame is a thing. It's a part of the clip. The hinge
8 member is a physical thing that's a part of the clip.

9 Now, aside from that, the other two terms,
10 rotatably attached and disposition, relate to how these
11 pieces are joined together and how they function
12 collectively in the clip, and we'll go into detail as to
13 exactly what's going on.

14 So the patent itself tells us what the clip
15 is for, and that's pretty clear. It supports a camera,
16 and permissibly it can support a camera on either a flat
17 tabletop, flat horizontal tabletop, and you can also put
18 it on a non-flat surface, for instance, the housing of a
19 laptop screen, and here we have a couple of excerpts
20 just from the face of the patent itself, and it
21 basically just talks about the desire in the industry
22 for having some kind of adaptable support apparatus
23 going from tabletop to laptop.

24 And so accordingly, in the summary of the
25 invention section, the patentee describes it as being an

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1 object of the invention to provide such a clip that can
2 take you from horizontal tabletop to nonhorizontal
3 laptop screen.

4 So that said, the patent also tells you how
5 the invention does this. It also tells you how the clip
6 is able to do this, and it's through rotation and motion
7 among its parts. That's how the clip works.

8 Again, here seen in the summary of the
9 invention section, the clip is described here as being
10 able to be rotated into a first position to support the
11 camera on the surface of the table or a desk, and then
12 you rotate it again into a second position to support
13 the camera on the display screen of a laptop computer,
14 and the parts of the camera, as they are set out in the
15 claims, and here's just a simple excerpt from
16 Independent Claim 1, which all the parties have been
17 referring to as sort of the example representative of
18 all the -- all the independent claims are the hinge
19 member and the support frame.

20 Okay. So we have here a clip. We know what
21 it's supposed to do. We know that it does this through
22 rotational motion among its parts, but, I mean,
23 logically the next question is, so what's rotating?
24 What -- what's actually the motion that's going on here?

25 And the claims tell you where and how the

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1 claim -- how the clip provides rotational motion. And
2 there's really only two places where anything can move.
3 There's a first axis of rotation at the point where the
4 hinge member may be attached to a camera, and there is a
5 second axis of rotation where the support frame attaches
6 to the hinge member. These are the only locations
7 described in the claims talking about where in or about
8 the clip that this thing can move.

9 So knowing this is a physical object and
10 describing it in words and telling you about axes and
11 pieces connecting together, it may be a bit hard to
12 visualize, so towards that end, Defendants have put
13 together a simple animation based on the figures of the
14 patent just to show you how everything fits together.

15 And my colleague will please play the
16 animation.

17 (Animation played.)

18 So here we have the first axis. The first
19 axis is at the point of connection between a camera and
20 the hinge member, and it rotates. That's where the
21 first axis is. And then the following slide, this is
22 where the second axis is. The second axis is at the
23 point of connection between the support frame and hinge
24 member, and it also allows rotational motion. So there
25 you go.

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1 Now, we've been saying time and again this
2 is a device with a particular function. It takes you
3 from tabletop to laptop. So we know where the pieces
4 are. We know where the axes are. Putting it together,
5 how does it work? Motion about the second axis. And
6 there you go. It takes the clip from tabletop to
7 laptop, one smooth motion. And this is just a slide for
8 later reference if you like, Your Honor, to sum up what
9 the previous animation shows. So there's really no
10 point in reading off of it right now.

11 But anyway -- so that brings us to the terms
12 that are actually disputed. We know what the clip is.
13 We know that the support frame is a piece of this clip.
14 We know the clip performs a specific function. So what
15 does it mean in relation to the invention that's claimed
16 in the patent to have a support frame?

17 And Plaintiff would answer this question
18 differently from Defendants, as you've already seen.
19 Plaintiffs would say it's a structural element that
20 supports a hinge member. Okay. And Defendants, just so
21 you have our complete construction in front of you,
22 would say that it's a physically distinct structural
23 element whose different dispositions enable support of
24 the hinge member.

25 And the reason why Defendants' construction

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1 gives you a little bit more information, Your Honor, is
2 that the type of physical structure that a support frame
3 is and what it does in the context of the clip because
4 it's a part of a clip that performs a function, all
5 these things have to be taken into account in
6 determining what a support frame is.

7 So if we start not with the preferred
8 embodiment, as Plaintiffs seems to believe we did, but
9 just with the claim language, it states here in
10 Subparagraph B describing the support frame, we have a
11 support frame rotatably attached to said hinge member
12 and configured to support said hinge member on the
13 surface and the object.

14 Okay. So what does -- what does this tell
15 us? We know that in the context of a clip, a camera
16 clip that can take you -- take the camera from tabletop
17 to laptop, the support frame is the structural element
18 within this clip that is responsible for providing
19 support on the tabletop and on the laptop, on the
20 different surface and the different object.

21 But if we stop here, Your Honor, all that
22 tells you is what the support frame does. What does
23 this tell you about what it is physically? I mean, I
24 can tell you that it can go from tabletop to laptop, but
25 what's -- what is the shape of this thing? How does it

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1 actually do any of this? It doesn't say. And that
2 precisely is why Plaintiff's construction is, in the
3 Defendants' opinion, willfully incomplete.

4 So, again, just for quick reference,
5 Plaintiff's construction of support frame is that it's a
6 structural element that supports a hinge member. It
7 doesn't actually tell you what the physical thing is,
8 and just saying that it's a structural element also
9 doesn't give you any information, because element, as we
10 already know from various old cases out there, is a
11 generic term. It just says a thing exists. It doesn't
12 tell you what the thing is.

13 And so as a practical matter, if you look at
14 Plaintiff's construction, take a careful look at it,
15 what it's really saying is that a support frame is a
16 means for performing the function of supporting a hinge
17 member.

18 Now, Plaintiff can't do this for several
19 reasons, and in their brief, there's case law cited, but
20 really what it all boils down to is common sense. They
21 can't be allowed to claim all possible means, physical
22 or otherwise, for supporting the hinge member because
23 it's an old canon of claim construction, and here's a
24 citation provided here, but really we don't even need to
25 look at it, that you can't just define physical things

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1 solely by what they do instead of by what they actually
2 are.

3 And, again, there's citations for this, but
4 the principle is really rooted in common sense. If you
5 don't tell me what the physical thing is that's doing
6 something, and I'm claiming or supposedly claiming a
7 physical thing, then conceivably that thing that
8 performs a function could be any conceivable physical
9 thing that could conceivably somehow fulfill that
10 function and -- because really just there's no limits.
11 There's no metes and bounds to what the thing itself is,
12 as a result of which any given member of the public
13 reading a patent like this would go, okay, you're
14 telling me there's a thing that can do this, but what --
15 what's the thing? I have no idea. There's no
16 fulfillment of the public notice function, which is the
17 entire point of why we have patents, why we require the
18 patentees to describe what their inventions are.

19 And that is why, Your Honor, time and again
20 the Courts have said, reiterated -- reiterating this
21 common sense principle, that the patentee simply cannot
22 be allowed to claim all possible means of achieving a
23 function. You have to tell me what the thing is and how
24 it's achieving that function for me to have any idea of
25 what it is that you're talking about.

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1 Now, there's two different ways out of this,
2 and this is also well established, and both by statute
3 and in the case law, just as a quick summary, one of
4 them is established by Congress in Title 35, Section
5 112, Paragraph 6, and that is the availability of
6 means-plus-function claiming.

7 You can designate a term as literally being
8 I'm only claiming the means for performing a function,
9 but the result, the consequence mandated by statute of
10 doing that is you have to limit what it is you're
11 claiming to the specific structure that's described in
12 the patent and its equivalence, and that's it. And the
13 only other way out -- and the only other alternative to
14 that is you tell me something about what the physical
15 structure is in the language of the claims. You have to
16 give me some idea of what it is.

17 Now, here, Plaintiff has not even attempted
18 to argue that a support frame is a means-plus-function
19 term. Defendants don't think it should be either, but
20 at the same time, if you look at their construction,
21 Your Honor, they're saying that a support frame is
22 basically any sort of physical means for supporting a
23 hinge member, which completely goes back on the position
24 that they've been taking on the construction since the
25 beginning, that there are no means-plus-function terms

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1 here, and also goes against this very old common sense
2 principle, that if you're claiming a physical thing that
3 does something, you have to tell me what the thing is,
4 you can't just tell me what it does.

5 So the only alternative left here for -- for
6 us to make any sense of what the claims are going to is
7 to look to the claims to tell us something about the
8 physical structure. And this is precisely what
9 Defendants aim to do.

10 So here the claim language does actually
11 tell us something about the physical characteristics of
12 a support frame. Again, going back to Subparagraph B of
13 Independent Claim 1 as an example, it tells you that the
14 support frame is configured, shaped somehow or arranged
15 somehow, to support the hinge member on a flat surface
16 or a vertical object such that it would have a first
17 disposition when it's positioned on a generally
18 horizontal flat surface and a distinct second
19 disposition attached to a -- an object that has been
20 inclined from a horizontal position.

21 Now, what does that tell us? So
22 disposition, to the extent that there's any agreement
23 between the different sides at all on what that word
24 means, refers to a configuration or an arrangement,
25 something has been arranged in space.

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1 So at the very least, the very least that
2 the claims require is that the physical structure of the
3 support frame has to be such that it could take these
4 different dispositions. The physical structure of the
5 support frame has to allow it to have these different
6 configurations depending on whether or not it's resting
7 on a flat desk or on a laptop screen. That's the very
8 least.

9 Now, Plaintiff will say that the
10 dispositions are not related to supporting the hinge
11 member, but because the support frame can support the
12 hinge member by being attached to it, I mean, just as --
13 at a very superficial level, the word attached is not
14 the same as support, and I don't think there's any
15 reason why we should confuse the two.

16 And just for another more graphic example,
17 imagine, Your Honor, that I have, say, like the -- any
18 given camera or camera plus clip assembly in my hand,
19 and we know that the camera is attached to the hinge
20 member, if I can flip the entire camera plus clip
21 assembly upside down and somehow balance the camera on
22 the desk, does the camera now become the support frame?
23 It's attached to the hinge member, but it's not, and
24 it's not because it does not have the structural
25 characteristics required of a support frame in the

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1 claims. But just saying that it's attached to the hinge
2 member does not get you there.

3 And we can look also to the specifications
4 permissibly just as further confirmation of what the
5 claims are already telling us, that it's the
6 dispositions or the different dispositions of the
7 support frame that allow it to provide support for the
8 entire hinge member and camera assembly on different
9 surfaces.

10 For instance, here, going back to the
11 summary of the invention section, that's the shortest
12 text -- the smallest text box you see in front of you,
13 it says that the clip may be rotated to a first position
14 to support the camera on the desk, rotated to a second
15 position to support the camera on a vertical object such
16 as the display screen of a laptop computer, and then,
17 also, further clearer descriptions of what one
18 embodiment of the invention would do.

19 In Figure 2, you see that the entire camera
20 plus clip assembly is resting on a flat, horizontal
21 surface, and in describing what's going on in Figure 2,
22 the specification tells you that in the embodiment,
23 there are specific rear end support elements -- rear end
24 support elements 38 and 40 and 42 that are touching
25 the -- or engaging the flat, horizontal surface at

CLAIM CONSTRUCTION HEARING

1 certain locations such that the entire assembly is
2 resting in the position 44.

3 Basically, what that's telling Your Honor is
4 the parts of the support frame are arranged or
5 configured in a certain manner, and that is how the
6 entire assembly can rest on a flat surface.

7 Now, Figure 4 will show you another
8 disposition, a second disposition where the entire
9 camera plus clip assembly is resting on an inclined
10 object such as a laptop screen, and, again, what's going
11 on here to clarify what the support frame is doing, the
12 specification tells you that the rear end support
13 elements 38, 40, 42 are touching the housing at the
14 locations shown in 44 such that the entire assembly is
15 supported in a position 54.

16 So there you go. This is just further
17 confirmation with pictures showing you that as the
18 claims say, the disposition of the support frame is what
19 allows it to support the hinge member on a flat desk or
20 a laptop screen. So --

21 THE COURT: I guess -- I just have a
22 question, I guess.

23 MS. LU: Uh-huh.

24 THE COURT: Let me just go through them. I
25 guess just to the point you just raised, I'm not sure

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1 that I'm understanding why the different dispositions
2 enable support. I mean, why doesn't the support
3 frame -- just a piece of plastic itself support the
4 hinge member? I mean, why does it have to be in certain
5 dispositions or, you know, I mean, why does it just in
6 and of itself provide support? It's a frame that
7 supports. I don't understand why that's of necessity,
8 the disposition supporting the hinge member.

9 MS. LU: That's an excellent point, Your
10 Honor, and to kind of help clarify our point, it's not
11 Defendants' contention that the word support doesn't
12 have some meaning in the English language. What we'd
13 ask the Court to do is look at what the entire invention
14 is, and the entire invention as described in the -- oh,
15 I guess I don't have to go all the way back -- but if
16 you recall from the brief introductory section, the
17 entire invention is a clip that can take you from
18 tabletop to laptop.

19 I mean, you could have a piece of plastic
20 attached to a hinge member, but the point of the clip as
21 a whole is to be able to provide support on different
22 surfaces. So when we say providing support, in the
23 context of what the invention is designed to do, that
24 means providing support on top of different things, and
25 in order to be adapted to differently inclined surfaces

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1 and objects, something about the invention has to be
2 adaptable, as well. And those adaptations, as the
3 patentee described in the claims, are the different
4 configurations or dispositions of the support frame.

5 THE COURT: Well, I don't -- I'm not saying
6 necessarily by what I'm asking that I disagree with your
7 overall sort of position as to what this invention is
8 designed to do and what it does and all that. But I
9 guess my question would be why is it important to I
10 suppose implement that idea into the definition of
11 support frame?

12 And I guess what I'm getting to is I guess
13 I'm not clear from your argument why the claim itself
14 doesn't outline what you just said? I mean, it talks
15 about that it's configured to support the hinge member
16 on the surface and the object, and it goes on to talk
17 about the first axis and the second axis and all that.

18 I guess I don't -- I mean, is the claim, you
19 know, that unclear that we've got to define the support
20 frame by the different dispositions when the different
21 dispositions are talked about in the claim?

22 MS. LU: You know, Your Honor, that is an
23 excellent point, and from Defendants' perspective, the
24 claim is clear, too, but the mischief at work here is
25 not whether the entire claim is clear. The mischief

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1 that Defendants are concerned about is in Plaintiff's
2 construction.

3 It states that a structural element -- or a
4 support frame is just a structural element that supports
5 a hinge member. And as you heard just now from
6 Plaintiff's argument with respect to this term, they
7 don't see any reason even to relate the dispositions to
8 what a support frame -- what this thing that's the piece
9 of a clip is.

10 And from Defendants' perspective, that's a
11 problem because the claims are clearly required, impose
12 a physical limitation on what the shape of a support
13 frame is, and that physical limitation has to require it
14 to provide support by taking these different
15 dispositions, but it's inherent in Plaintiff's argument,
16 as you heard just now, Your Honor, that they're trying
17 to divorce the idea that the shape of the support frame
18 has to be limited in this way for it to function in the
19 way that it's supposed to to serve its role in the clip
20 from the definition of support frame. And that is what
21 Defendants are concerned about.

22 So we really appreciate, Your Honor, that
23 you're looking deeply into the claims and seeing the
24 same point that Defendants have been seeing, is that the
25 dispositions is a physical property that's inherent and

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1 necessary to what the support frame is, and we just with
2 our construction hope to clarify that and avoid the
3 mischief that Plaintiff's construction would otherwise
4 work.

5 THE COURT: Okay. Let me ask you, I guess
6 I'm also a little bit unclear. I think part of your
7 problem with Plaintiff's proposal is that you say, well,
8 it just is sort of defining support frame by what it
9 does, by its function. I'm a little unclear as to why
10 your proposal that adds -- essentially it's the same
11 thing, except it says, whose different dispositions
12 enable support.

13 I'm not sure that different dispositions
14 provides any more structural identification than -- than
15 theirs does. It seems to also go to the function, you
16 know, that it's -- as to how you position the support
17 frame it -- it supports.

18 I suppose that might give a little bit more
19 of an idea of what the -- of what it looks like, but it
20 seems like it also is sort of discussing it in -- in
21 functional terms. So I guess have I kind of articulated
22 what you believe as far as different dispositions that
23 gives at least a little bit more of an idea how the
24 support frame would -- would look and would be
25 structurally composed?

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1 MS. LU: Yes, that's right, Your Honor. So
2 the thing here, and I guess Defendants are also trying
3 to be modest and not trying to overreach at all as
4 Plaintiffs contends in looking to the preferred
5 embodiment.

6 Now, what would really give a clear picture
7 of what the support frame physically is, is if you just
8 look to the illustrations in the specification. I mean,
9 that -- if anything tells you what the structure of this
10 thing is, it's that. But in the interest of being
11 agreeable, not trying to restrict the patent any more
12 than the claims do, Defendants have not attempted to say
13 that the support frame is a physical thing with front
14 and back legs, you know, rear end support elements 38,
15 40, and 42.

16 But at a minimum, and this is another
17 reason why Defendants would like to present their
18 constructions for disposition and support frame
19 together, Your Honor, is that the word disposition, in
20 order to be arranged in a certain way, you have to also
21 be able to give some idea of what the arrangement is,
22 because an arrangement is something that exists in
23 physical reality. It's something put together or
24 configured in space. And so that gives much more of a
25 physical idea of what a support frame is than

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1 Plaintiff's construction.

2 We agree it could be better. The patent
3 could have gone ahead and described more structure, but
4 at a minimum, at a very minimum, as required in the
5 claims, this is what it is.

6 Now, if Your Honor would -- is of the
7 opinion that it would be clearer if we just say, it has
8 front and rear support elements 40, 42 and 38,
9 Defendants would be amenable to that, as well.

10 THE COURT: Okay. Well, let me hear back
11 from the Plaintiff. I think I need to get with them
12 on -- I guess, Mr. Edmonds, what -- going, I guess, more
13 to this idea of disposition, I guess, what is the
14 Plaintiff's position on -- I mean, it talks about -- you
15 look at Claim 1, said support frame having a first
16 disposition, positioned on said generally horizontal
17 substantially planar surface and said support frame
18 having a second disposition attached to the object --
19 you know, so it talks about, obviously, first and second
20 disposition, first and second axis.

21 I mean, give me an idea of, you know, what
22 does this mean? You know, what is the jury to make of
23 this? How are they to interpret what's going on here?
24 Are we -- you know, even if the Court does not put that
25 the frame has different dispositions, we go to

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1 disposition, define it. They propose through rotation
2 about the second axis -- I mean, what is -- what is the
3 Court and the jury supposed to do with that? I mean,
4 what -- what is going to be your position as to what
5 these -- what this means? I mean, are these the
6 dispositions, you know, related to these axes? Are they
7 related to these objects? I mean, how does this thing
8 work?

9 MR. EDMONDS: Fair enough, Your Honor.

10 Could I have their Slide 21 back? I thought
11 it may have illustrated it better than anything else.
12 21.

13 As we see it, Your Honor, the -- what
14 they're talking about in terms of what they're trying to
15 shoehorn into the definition of support frame, those are
16 already provided for in the claim itself, and in terms
17 of the support frame that's required to have a first
18 disposition, it's already there.

19 So there's no -- you know, we're not
20 claiming that that's not part of the claim. We're just
21 saying that that's not what enables -- what is required
22 to enable support.

23 THE COURT: Okay. But let -- let's move --

24 MR. EDMONDS: Yes.

25 THE COURT: -- let's move from support

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1 frame, I want to move to disposition itself.

2 MR. EDMONDS: Yes, Your Honor.

3 THE COURT: Okay. Your proposal is
4 configuration or arrangement for disposition, correct?

5 MR. EDMONDS: Yes, Your Honor.

6 THE COURT: And they're proposing
7 configuration of the support frame enabling support of
8 the hinge member accomplished through rotation about the
9 second axis. What I'm really concerned about is not so
10 much about the first part of what they proposed but the
11 second part, that this disposition is accomplished
12 through rotation about the second axis.

13 MR. EDMONDS: Same -- same concern here,
14 Your Honor, and it's frankly not clear to us what
15 non-infringement argument this supports. And maybe the
16 Defendants could enlighten us as to whether that webcam
17 there would -- would meet the claim as they have
18 proposed to be construed, because apparently what
19 they're -- what we see them doing is they're trying to
20 limit -- disposition is -- is just a very
21 straightforward word. Configuration is a very
22 straightforward word. And they're trying to limit that
23 to something that's accomplished about the second axis.
24 So they're trying to -- to limit the word disposition to
25 a -- if I could borrow your webcam.

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1 They seem to be trying to limit disposition
2 to something that's limited to one axis, one thing. So
3 what they seem to be saying is that I have to enable
4 support of this camera by this -- something that happens
5 in this axis, and apparently they have a
6 non-infringement argument to say that, okay, I may be --
7 I may be supporting this thing, but what's enabling this
8 support is not what's happening on this axis.

9 That -- that's all we can tell they're
10 trying to do, and that's why I think they're trying to
11 import things that are already in the claim into this
12 term because there's a sleight-of-hand here to where
13 they're -- because they're trying to limit it to the
14 second axis, they're trying to import a whole
15 non-infringement argument into one claim term.

16 And, you know, like I said, I'd invite them
17 to say would this infringe under their construction? If
18 not, why not? And then maybe we'd understand why
19 they're making this argument better. But all we can see
20 is they're -- they're taking words that don't belong
21 there, and they're adding them, and there's obviously
22 some reason.

23 THE COURT: Okay. Well, that's a point well
24 taken. But I guess what I want to understand is -- I
25 think what they're saying is that in their animation

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1 that the disposition, let's say, on the object is
2 accomplished through this sort of back and forth which
3 is oriented about the second axis. Am I correctly
4 stating your understanding? Maybe I need to get them up
5 here.

6 MR. EDMONDS: Well, if we pull up Claim 1, I
7 think it's -- it's easier to -- to follow here. So as
8 far as -- I think, Your Honor, that -- and as far as the
9 first axis and the second axis, I think that -- that
10 everyone, I think, seems to -- to disagree that the
11 first axis is vertical. That's the way this works,
12 because -- because you're dealing with horizontal
13 surfaces and something that's inclined from a horizontal
14 surface. So the first axis is vertical. The second
15 axis is horizontal.

16 And in terms of what was -- I think -- I
17 think that's already -- and what we're saying is that
18 the support frame has to have a first disposition on the
19 table, and it has to have a first disposition -- a
20 second disposition on the object or the laptop.

21 Now, the support frame, you could still have
22 a support frame, and -- but if it doesn't have a first
23 disposition on the surface and if it doesn't have a
24 second disposition on the object, then it doesn't
25 infringe. It's still a support frame. It's just that

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1 the claim limitation is not --

2 THE COURT: But that's my question, I think,
3 is --

4 MR. EDMONDS: Right.

5 THE COURT: -- you say, okay, the support
6 frame has to have a first disposition and a second
7 disposition. How are you defining -- you're saying it's
8 just a configuration or arrangement?

9 MR. EDMONDS: Right.

10 THE COURT: And what I'm trying to get at
11 is -- I guess my question is, is that enough? They're
12 saying that disposition is accomplished through rotation
13 around the second axis, I think, or the first axis, but
14 what is your -- I mean, is it -- is it -- is the
15 disposition connected to the axis of rotation, I guess,
16 is what I'm asking?

17 MR. EDMONDS: Fair enough.

18 THE COURT: And if it is, how are you
19 defining -- how are you kind of linking the two
20 together?

21 MR. EDMONDS: Well, they're -- they're
22 linked together by the other claim language, and -- and
23 if I may borrow -- so it just has to have a -- we have
24 to have, one, a first disposition, one, a second
25 disposition. There's no -- there's no limit on what

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1 those are until you get to the other claim limitations.

2 First -- first disposition is sitting flat.

3 The second disposition would be here what's sitting on
4 top of the computer. Fair enough. Now, that's all
5 that's required. It has to have a first disposition on
6 the surface, a second disposition on the -- on the
7 object.

8 Now, separately in the claims, it says that
9 there has to be an axis rotation for the hinge member,
10 and it says there has to be an axis rotation for the
11 support frame, and that those axes have to be
12 perpendic -- generally perpendicular to each other.
13 That's -- what you're asking about is already there in
14 the claim. There's no need to -- there's no loss of
15 structure. There's no ambiguity. The claim itself
16 provides, as I said, the hip bone's connected to the leg
17 bone.

18 We understand how these pieces are connected
19 and how they move by the claim, and -- and going to our
20 definitions, well, disposition -- see, there's no --
21 there's nothing in the -- in the claim that says that
22 the support has to be accomplished through rotation
23 about a second axis. It just simply says it has to
24 support, it says it has to have two configurations.
25 Separately it says that there have to be two axes

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1 relative to the hinge member and relative to the camera.

2 So when you -- the sum total of what they're
3 trying to do is they're trying to limit it to where the
4 rotation about the second axis has to be the thing that
5 enables support of the camera, and that's just simply
6 not in the claim. The claim wasn't written that way.

7 Thank you.

8 And we had one thing for the Court. We're
9 familiar with the Markman ruling from the Court in -- I
10 call it SFA, it's Sales Force Automation. I think there
11 were two different Markmans, and I think in that case,
12 the Defendants had argued something similar relative
13 to -- let's see, the claim term had to do with -- I
14 think it was just hardware or software that did
15 something, and they were -- there was -- the Defendants
16 in that case had suggested that -- that that wasn't
17 enough, and the Court looked at the surrounding claim
18 language and saw that proper context and proper
19 understanding was given by the surrounding claim
20 language. That may be something that might inform the
21 Court here.

22 THE COURT: Okay. All right. I'd like, I
23 think, to go ahead and move on, unless there's something
24 else specifically the parties want to address on support
25 frame or disposition, go ahead and move on to the next

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1 two -- or, I guess, whatever the -- I think we got left
2 rotatably attached and hinge member. So unless you have
3 something specific to address on -- on either one of
4 those -- the two terms we just talked about, I think
5 we're ready to move on to the other two.

6 MS. LU: Actually, Your Honor, there is
7 something specific Defendants would like to address with
8 respect to what Plaintiffs just said --

9 THE COURT okay.

10 MS. LU: -- and with respect to the
11 disposition.

12 THE COURT: Go head.

13 MS. LU: So I think, Your Honor, the
14 question that you posed just now is here the claims tell
15 you there's a second axis, here the claims tell you that
16 there is different arrangements, physical arrangements
17 of the support frame that depending on what it's resting
18 on that the patentee termed the first disposition and
19 the second disposition, and I think what Your Honor was
20 getting at, and this was something that Defendants
21 struggled with, as well, is if you're telling me that
22 something -- there's a physical thing in space that can
23 be arranged in certain ways, and it can be moved from
24 one arrangement to another, then logically the next
25 question is, well, how do you -- how do you arrange it?

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1 What -- what's an arrangement?

2 And Plaintiffs would respond that you look
3 at the claims and the word disposition is a simple word,
4 and it has a plain and ordinary meaning, or it means
5 configuration or arrangement, well, you can say all
6 that, but we're not trying to determine whether or not
7 the word disposition has a meaning in the English
8 language out there in the abstract. We're here talking
9 about a camera clip whose shape is adapted so that you
10 can go from tabletop to a laptop. That is what we're
11 talking about here.

12 And in this context, what does it mean when
13 you have a disposition, and what does it -- what is its
14 relation really to the rest of what's in here? And the
15 Defendants would say that from the claims, it's apparent
16 that a disposition, you can't simply say that it's just
17 the configuration, because that still tells you nothing
18 what a physical arrangement of a physical thing in space
19 physically is.

20 And just to drive the point home, we brought
21 here a couple of examples. Here we have U.S. Patent
22 5,8 -- 5,857,684 for a collapsible golf cart, and before
23 the parties get up here and object and say it has
24 nothing to do with the camera clip, that is actually
25 precisely Defendants' point.

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1 Golf cart, collapsible or not, is not a
2 camera clip, has nothing to do with a camera clip. Yet
3 you look at the claims here, and what is it talking
4 about but a frame that has different dispositions. I
5 mean, what's the difference between a disposition here
6 and a disposition in the patent that we're talking
7 about? They both mean arrangement. They both mean
8 arrangement or configuration of a physical thing.

9 But that's not enough. I mean, when you say
10 there's a disposition of a golf cart, that doesn't mean
11 the same thing as a disposition for a camera frame.
12 Why? Because it's a different device serving different
13 purposes, and because it's a mechanical thing and things
14 are arranged, you have to tell me how the different
15 parts are arranged, and they're arranged in different
16 ways.

17 Now, there's many examples of this. If you
18 just go on Google patents and say, enter a support frame
19 and disposition, hundreds of these things will come up.
20 The word disposition will mean a physical arrangement or
21 configuration in every single one of them, but in every
22 single one of them, when you say disposition of a golf
23 cart as opposed to a disposition of a support -- of the
24 support frame of a camera clip, it will mean something
25 different because it's a different device with a

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1 different purpose.

2 And here again is another such example of a
3 folding creeper, which I recently learned is a type of
4 lawn chair. I did not know that before. This thing has
5 not only one disposition or two dispositions but also a
6 third and fourth disposition, and here in the claims,
7 they tell you not only that they're -- these different
8 dispositions exist, they also tell you exactly how you
9 make them and exactly what they're for. That's what
10 tells you what a disposition is with respect to a
11 folding creeper.

12 So the bottom line is this, the word
13 disposition, if you consider it in the absence of what
14 it -- what the clip does doesn't have any meaning. You
15 know, what's the difference between disposition in the
16 golf cart patent as opposed to disposition in the camera
17 clip patent, different device, different purpose,
18 different way to form it.

19 And so at a minimum, to ascribe any physical
20 meaning to the word disposition, and Defendants are of
21 the opinion that disposition, because it means a
22 physical arrangement, should have physical meaning, you
23 have to know what's being disposed, why it's being
24 disposed, and most importantly how you're causing it to
25 be disposed. I mean, you can't just telling, I can

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1 arrange something, without telling me how to arrange it.
2 That's just common sense.

3 And the claims can't answer these questions
4 here. So going back to Subparagraph B, which tells you
5 about the support frame and how it fits into this whole
6 camera clip thing, we have the disposition is a
7 configuration of a support frame. You have multiple
8 dispositions, so it has to be able to transition from
9 one to the other. Transition requires movement, and the
10 only point of movement attributed to the support frame,
11 the only way that we -- the claims tell us that the
12 support frame can move is about -- is rotation about the
13 second axis. That's it. That's all the claims give us.

14 So, again, as an illustration, because here
15 we're talking about spacial arrangements of a physical
16 thing, it might be helpful to actually see it as opposed
17 to try to visualize where the pieces go.

18 And will you play the animation?

19 (Animation played.)

20 There you go, movement about the second axis
21 taking you from tabletop to laptop, two different
22 dispositions. So at a minimum, at a very minimum, the
23 physical description of a disposition with respect to
24 the patent here requires that it's a configuration of a
25 support frame that enables support of a hinge member and

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1 that it's accomplished through a rotation of the second
2 axis at a very minimum.

3 Now, as Your Honor contemplated earlier,
4 maybe that is not enough structural description, and if
5 it is, the Court's opinion that we should limit it to
6 front and rear support elements and talk about those
7 arrangements instead, Defendants would be amenable to
8 that, as well, but at a very minimum, you have to tell
9 me how to arrange something if you're going to say that
10 different arrangements exist and they serve a purpose.
11 And the only way that the claims give you to do that is
12 rotation about the second axis.

13 Now, in comparison, you go back and look at
14 the Plaintiff's construction again, it's just saying
15 configuration or arrangement, it becomes clear why that
16 lacks context. So as you've already heard, Plaintiff
17 will say, well, you know, there is a support frame, and
18 it's attached to the hinge member, so, therefore, it's
19 supporting and it also has dispositions, and that's all
20 you need.

21 But I don't believe Plaintiff answered your
22 question when -- and Defendants think this is where you
23 were going, Your Honor, is what -- what is it? I mean,
24 if you're telling me there's an arrangement of the
25 support frame, what is it and how do you do it? Like

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1 how do you make a disposition? If you're going to
2 arrange something and this arrangement serves some
3 function, it's not in there for no particular reason,
4 then how do you do it?

5 And here, again, Your Honor, it's a matter
6 of common sense, the claims go to a functioning device.
7 It's not to a list of parts. The claim is telling
8 you -- is teaching you -- is claiming something that can
9 do something, a clip that can take you from tabletop to
10 laptop, but if you don't tell me how to configure it,
11 how to adapt it from one thing -- from one surface to
12 another, then what I'm leaving you with is I'm not
13 telling you how to make the invention work, and that is
14 a big problem.

15 Again, from a matter of common sense, and
16 here on the slide, Your Honor, we provided a citation to
17 a seminal text on the principles of claim drafting, but
18 this is mostly just for ease of reference. I mean, you
19 can think about it in the absence of looking at any
20 text. If you're going to claim something, if you're
21 going to contribute to society something that they
22 didn't have before, a functioning device, a device that
23 can do something, then I sure hope your claims tell me
24 how you can do it because then I don't know what you've
25 contributed.

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1 It's not -- and going to the text here, this
2 Faber on Mechanics of Patent Claim Drafting is more of
3 an expert on this, presumably, than -- than I or the
4 Plaintiff. The claim must be to an assembled operable
5 combination, not to a mere parts list, and that, Your
6 Honor, Defendants think really sums up the point.

7 The clip functions to take you from tabletop
8 to laptop. As part of doing so, it takes on different
9 physical arrangements. You have to tell me how to make
10 those physical arrangements, and the second axis is the
11 only means in the claims that allows you to do that.

12 Now, Plaintiff has suggested that maybe
13 there are other ways to form dispositions. Well, that's
14 great, but that's not in the claims. Are you telling me
15 that the second axis is immaterial, that the claims set
16 that out, but that has nothing to do with how to make
17 the invention work? Well, then, how does the invention
18 work?

19 That is the connection that has to be there,
20 Your Honor, so the disposition, in order for the camera
21 to function, in order for the camera to take functional
22 arrangements, that functional arrangement has to be
23 about the second axis in order for this entire thing to
24 make sense.

25 THE COURT: Okay. Well, let me -- let me

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1 back up a little bit then. Now, what you've shown me in
2 this animation --

3 MS. LU: Uh-huh.

4 THE COURT: -- I'm assuming by showing me
5 that, you're saying that is what you believe this claim
6 comprises, that type of camera that goes from the table,
7 rotates on a second axis, and you set it on the laptop
8 screen; am I -- am I correct?

9 MS. LU: Right. That animation is drawn
10 from the figures in the patent, and that's an example
11 showing you how the invention works. So, yes, that's
12 right.

13 THE COURT: Okay. Well, I guess -- okay.
14 Give me an idea. We've argued here for an hour and 15
15 minutes about this -- this camera going from table to
16 laptop in such a fashion. I think Plaintiff raised the
17 issue, well, does that camera in Defendants' estimation
18 infringe this claim? Apparently the answer is yes. So
19 what are we really arguing about here? What's the
20 issue? Why is this so important?

21 MS. LU: The issue -- well...

22 THE COURT: I mean, I guess what's the
23 Plaintiff's theory on how this -- if what you're saying
24 is correct --

25 MS. LU: Uh-huh.

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1 THE COURT: -- and I think the Plaintiff
2 will probably agree to a large extent that this patent
3 is about a camera that can set up on a table and set up
4 on a laptop, what is their theory as to what's your --
5 how your cameras meet these claims, and then what's
6 different about the camera you're showing me in the
7 animation?

8 MS. LU: Well, correct me if I'm wrong, Your
9 Honor, but I didn't think that it was actually
10 permissible for us to talk about -- import our
11 non-infringement case into the claim construction, so --

12 THE COURT: Well, if I'm going to spend over
13 an hour talking about this, I need to know what's going
14 on here. Why is this important? I mean --

15 MS. LU: Right. Excellent point, Your
16 Honor.

17 THE COURT: I'm going to make it an issue,
18 so tell me what's going on in this case.

19 MS. LU: Okay. So what Defendants are
20 concerned about with Plaintiff's construction is saying
21 that a configuration or physical arrangement exists, but
22 I'm not going to tell you how to make that
23 configuration, and moreover, the only means of making
24 that configuration in the claims, the second axis should
25 not be taken into account -- taken into account when

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1 you're trying to tell me what the configuration is.

2 What Defendants are concerned about here is
3 Plaintiffs will say anything connected to something else
4 connected to a camera where the thing that's closest to
5 the bottom could have different shapes. I'm not -- it
6 doesn't matter how it makes it, it doesn't matter if the
7 claim tells -- if -- if that product makes different
8 shapes in a way that's taught by the claims, it doesn't
9 matter if those have any relationship, then that's going
10 to infringe because there are two pieces, and it can
11 move, and one of those pieces can take different shapes.

12 If you're going to tell me that you're going
13 to read the claim on things that can take different
14 shapes, well, then, the shape has to at least be enabled
15 by the patent. It has to be -- you can't just say that
16 you take a camera and some piece that allows the camera
17 to rotate around two axes and stick it on to, say, a
18 giant magnet, and you move the magnet from tabletop to
19 laptop and say, oh, look, it's taking different shape,
20 or a big sticky ball and you change that big sticky ball
21 from one shape to another and say, look, it has
22 different dispositions, that something like that would
23 be covered by the claims.

24 THE COURT: Okay. All right. Well, let's
25 move -- I want to move on from this, but I do want to

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1 get Plaintiff up one more time on this because we've got
2 to move on.

3 Mr. Edmonds, you know, I want to raise the
4 issue here what really is -- is going on. I mean, what
5 they're saying is, look, what you claimed was this
6 configuration on the table, you move it, you rotated
7 this second axis that's referred to in the claim, you
8 set it up on the laptop. And they're saying, you're
9 trying to make this into something that if it's got
10 anything that supports this camera and you move it from
11 table to laptop, as long as it's got this axis -- two
12 axes you can find, it infringes.

13 And they're saying, no, what you invented
14 was this thing you can move from one surface to the
15 another -- a surface to an object by rotating it, and
16 that's what you've got, and now you're trying to make it
17 into something that covers, I guess, a multitude of
18 webcams that your claim is not supportive of, so --

19 MR. EDMONDS: Yes, Your Honor, and I
20 think --

21 THE COURT: What is your theory here?
22 What's going on here?

23 MR. EDMONDS: Good question. So -- and I
24 think this illustrates the point. My question to
25 them -- I think everybody agrees that the illustration

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1 in their PowerPoint meets the claims limitation. I
2 think the issue is this one here that the Court's
3 looking at that they brought with them, because we say
4 this infringes, they say it doesn't. So I think this is
5 where -- really where the rubber hits the road.

6 So the only thing I can figure out that
7 they're getting at is here we have a hinge member, it's
8 here, it's rotatably attached to the camera, and it
9 rotates throughout the first axis of rotation, which is
10 the horizontal axis. This also rotates around other
11 axes of rotation, too. I think they want to say that
12 it -- it has to rotate around -- there has to be a
13 single axis of rotation and that has to be what
14 accomplishes everything, and if it does more, if it
15 rotates in more than one axis, then it doesn't infringe.
16 They're going to say to the jury that the Court has
17 construed this so narrowly that if we -- that if we
18 rotate in more than one axis, then we can't infringe.

19 I think that's where the rubber is hitting
20 the road here, and I think that gets into the same thing
21 with hinge where they say it has to be a specific kind
22 of joint, and we get that. I think it's the same
23 argument over and over again to where essentially
24 they're saying that the only thing that could possibly
25 infringe is something that's configured exactly like the

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1 one that's in the patent, and we're saying that the
2 claim language, it should be interpreted -- you should
3 look at the claim, not the preferred embodiment.

4 THE COURT: Well, I'll just ask one more
5 thing --

6 MR. EDMONDS: Yes.

7 THE COURT: -- and then we do have to move
8 on. The way I'm understanding their argument here at
9 the very end was I'm not sure it's so much what you're
10 pointing out. It seems to me what they're saying is, is
11 that they're saying the thing is sitting on the surface,
12 then as you move this clip to the laptop, you rotate it
13 about this second axis, which I think is a horizontal
14 axis, correct, or is it the --

15 MR. EDMONDS: The second axis is horizontal,
16 yes, Your Honor.

17 THE COURT: So you rotate it, and that's
18 what enables you to fit it onto the laptop. So it's
19 almost like it's this transition. They're saying,
20 configuration table, configuration laptop. You go from
21 one to the other, one disposition to the other by
22 rotating it.

23 MR. EDMONDS: And maybe that is what they're
24 saying. I mean, that's just simply -- that -- that
25 illustration they had is really neat, but that's not in

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1 the patent, that's not required by the claims. There --
2 it's just all that I acquired is -- it's an apparatus,
3 so it's not a method of kind of shaping itself that way.
4 The apparatus has to have a first disposition; it has to
5 have a second disposition. It doesn't say that there
6 has to be some transition between the two. If that's
7 how they're reading it, it's just not there.

8 THE COURT: Well, I think that is how
9 they're reading it. They're saying because you've got
10 these two orientations, two dispositions, that this
11 clip, how you do -- how you maneuver these orientations
12 is by rotating it around this second axis. I think
13 that's why they say -- you know, I'm really not sure as
14 I -- maybe I'm not fully understanding what they're
15 saying. That seemed to be what they were saying at the
16 end there, but anyway...

17 Okay. All right. Well, I tell you what,
18 we're going to take a break for about 10 minutes and
19 then resume with, I guess, rotatably attached and hinge
20 member and -- so all right, in recess for about 10
21 minutes.

22 COURTROOM CLERK: All rise.

23 (Recess.)

24 COURTROOM CLERK: All rise.

25 THE COURT: Please be seated.

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1 All right. What's the next term?

2 MR. EDMONDS: Hinge member, Your Honor.

3 THE COURT: All right. Go ahead.

4 MR. EDMONDS: Your Honor, with respect to
5 hinge member, it seems like the -- the battle -- the
6 battle lines are fairly drawn here. The -- the
7 Plaintiff says it's a structural element that joins to
8 another for rotation. And I think that there's a join
9 versus may be joined. I think that's somewhat of a side
10 issue with the Court. I mean, in the claims, they are
11 joined, so I'm not really sure why we're arguing over
12 how many angels dance on the head of a pin there.

13 But I think the big issue for the Court to
14 resolve is that this hinge joint, which is what the
15 Defendants are trying to read into the claim here,
16 whether -- whether a hinge member has to be limited to a
17 hinge joint or not, and I think that -- that is the
18 major question for the Court.

19 And the -- all right. The hinge member, as
20 claimed, it has -- it has to do a couple of things here.
21 First of all, all the claims have rotatable attachment,
22 all the independent claims have rotatable attachment in
23 there. So we know rotatable attachment is something we
24 need to account for.

25 And then go to the next slide.

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1 Claim 19 has hinged attachment. The parties
2 have agreed that hinged attachment means a hinge joint.
3 We've agreed on that. And I think where the battle
4 lines are drawn are the Defendants are saying that not
5 only is hinged attachment a hinge joint, but rotatably
6 attached must be a hinge joint, too. And that's just
7 simply improper claim construction.

8 When different words are used, it's presumed
9 to have different meanings, and if you go back a
10 slide -- it's interesting to see the difference in the
11 parties' graphics here, and I think if the Court -- the
12 color-coated things help the Court put it in
13 perspective.

14 This -- well, we have a front view and a
15 side view of hinge member 16, and the preferred
16 embodiment, hinge member 16 that's depicted in this
17 figure, has a hinged attachment, it also has a pivot
18 joint, and it's interesting -- and the -- I think the
19 graphic the Defendants are going to show you doesn't
20 have the entire hinge member 16 filled in. So it's --
21 it's an incomplete picture for the Court.

22 The hinge member 16 has a pivot element. So
23 the Defendants -- I got a preview of their slides, and
24 they have a slide with a -- with an old-style phonograph
25 that rotates, and I think they're going to say that that

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1 can't be included as a hinge member. I think what's
2 interesting about that is the -- the pivot element
3 that's shown here in the preferred embodiment with this
4 pivot joint, that rotates like a -- like a phonograph
5 does. So the -- the construction that the Defendants
6 are urging would read out a preferred embodiment,
7 which is presumptively wrong and we say conclusively
8 wrong.

9 I think it's also worth pointing out to the
10 Court that -- and go to the next slide -- the pivot
11 joint to better -- so in this one, we've got hinge
12 member 16, which is this whole structure -- I've pointed
13 out pivot element 80 of hinge member 16, which is this
14 pivot part.

15 And I think the pivot element is an
16 important point in the Court understanding whether
17 these claims are limited to a preferred embodiment or
18 not. If you look at Claims 8 and 17, Dependent Claims 8
19 and 17, they both have -- they both have a pivot
20 element -- or, excuse me, yeah, a pivot element and a
21 hinge element. We're getting there, Your Honor. Yeah,
22 there's 17. We have a pivot element and a hinge
23 element.

24 And so what we see here is that rotatable
25 attachment is not limited to a hinge joint, and, in

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1 fact, if it was, Claim 17 and Claim 8, which has the
2 same -- the same language there, would be inoperable and
3 a nullity because you couldn't have a pivot element -- a
4 pivot element and a hinge joint are two different
5 things.

6 I think that's basically where the -- where
7 the rubber hits the road there, Your Honor, and
8 whether -- I understand that the patentee used the word
9 hinge member, and I think what the Defendants say at the
10 first instance is, well, they're saying a hinge member
11 isn't a hinge, and perhaps to a certain extent, we are
12 in a sense that the claims and the specifica -- the
13 specification teaches and the claims not only teach but
14 require that you can have at least pivotable attachment
15 here with the hinge member. So there's no way that it
16 could be limited just to a hinge joint.

17 And I think what -- to put it in perspective
18 for the Court as to, again, why we're -- why these
19 things matter, I presumably -- and I'm going to borrow
20 their webcam.

21 Can I borrow it, or did it disappear? Thank
22 you.

23 So -- so this helps put it in perspective,
24 this -- this webcam that we -- that they brought with
25 them, this -- this is what's swinging down here is a --

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1 is a hinge joint. Everybody agrees on that. And
2 presumably what they're going to say is that what is up
3 here is not a hinge joint, and thus this doesn't
4 infringe because a hinge joint is required.

5 But it's funny, when you look at this webcam
6 and you look at the preferred embodiment, as you can
7 see, this webcam rotates on a horizontal axis with a
8 pivot -- it pivots just like the preferred embodiment
9 does. So, I mean, fundamentally, what -- what the
10 Court's faced with is it going to have a construction
11 that excludes a preferred embodiment.

12 And then I think the other fundamental point
13 of disagreement between the parties is that the
14 Defendants -- I think what their language is intended to
15 argue is that it can only rotate in one axis. It can't
16 rotate in more than one axis.

17 And our answer to that is to infringe the
18 claim, it must rotate in a first axis and a second axis,
19 and those axes must be perpendicular to each other, fair
20 enough. But the webcam can have other -- there can be
21 other axes or rotation. That's -- what's required to
22 infringe is one thing. What they're trying to do is
23 trying to say that if -- if we do that and more, then we
24 don't infringe because we're trying to get the Court to
25 limit it to something that is -- is restricted in this

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1 movement, and to that, we say that that's not how claims
2 are interpreted. To us, that's claim interpretation
3 101.

4 This is comprising. There's no disclaimer
5 in the patent to say that it can only rotate in one
6 direction. What it says is that it must rotate in a
7 direction. It doesn't say that it can't rotate in other
8 directions. I think that's where the points of
9 disagreement are, and I think that the Plaintiff's
10 construction should -- should prevail for those reasons.

11 If -- in terms of kind of their picking
12 apart our construction, something -- somewhat what we
13 did with our constructions is we -- we took the
14 Defendants' construction and tried to reach as many
15 points of agreement as we could, which I -- which I
16 think helps highlight the points of disagreement for the
17 Court and where it needs to rule.

18 We both agree that a hinge member is a
19 structural element. We both agree on joining. We just
20 have joins or maybe joins. We both agree that there's
21 rotation. So really where -- where we part ways is
22 they've got another limitation in there that it has to
23 form a hinge joint as opposed to, for example, a
24 preferred embodiment, a pivot joint, or as opposed to,
25 for example, another joint that still meets the

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1 requirement of the claim that you have two axes that are
2 perpendicular. I think that's where -- where that one's
3 left. So I'll take them in turn, so axis of rotation --
4 we'll do them one at a time. Axis of rotation comes
5 next.

6 THE COURT: Okay. Response?

7 MR. ZARIAN: Thank you, Your Honor.

8 Respectfully, although counsel indicated, as
9 the Court has requested, that the hinge member and
10 rotatably attached terms would be dealt with separately.

11 I submit, Your Honor, that most of the
12 argument that was just given with respect to hinge
13 member actually relied on arguments about rotatably
14 attached. And, specifically, the statement was made
15 that rotatable attachment was not limited to a hinge
16 joint.

17 What I'd like to do is really focus on hinge
18 member and exactly what hinge member means and what the
19 proper construction of that ought to be. And we submit,
20 Your Honor, if hinge member means anything at all, it
21 has to do something -- it has something to do with
22 hinge.

23 What the Plaintiff would do is actually read
24 out the hinge functionality, the hinge term completely
25 from the construction of this term, from the definition

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1 of this term. So whether or not a hinge element has a
2 pivot, allows for a pivot function at the top and a
3 hinge function on the second axis at the bottom, it has
4 to have a hinge. That's our position.

5 So ultimately, the central disagreement here
6 is whether or not a hinge is a hinge, Your Honor.
7 That's -- that's our view of it, and Plaintiff's
8 construction in no way addresses or takes into account
9 the term hinge in defining and construing hinge member.

10 The word hinge, Your Honor, is used 66 times
11 in the specification or variations thereof. And every
12 independent claim in this patent uses hinge, the word
13 hinge to modify member. The patentee deliberately used
14 the word hinge to modify member in every independent
15 claim.

16 And this slide illustrates that, No. 36,
17 Your Honor. It is a basic rule, of course, of -- of
18 claim construction that claims must be interpreted with an
19 eye toward giving effect to all terms in the claim. And
20 here we simply must give effect, Your Honor, to the
21 important term hinge and not read that out of the claim
22 as -- as Plaintiff would do.

23 The ordinary meaning of the term hinge is
24 known to those with skill in the art, it's well known.
25 It's a joint that allows a swinging motion about a

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1 single axis, a single axis, and a door is the most
2 commonly cited example of exactly what that means.
3 There's an illustration here of how it works in a door
4 and how it works in a hinge. There's a single axis
5 about which a rotation occurs, and the door is a -- is a
6 great example of that, but the hinge is defined by its
7 rotation about that single axis and by the swinging
8 motion that goes along with it.

9 The specification's description here of how
10 the hinge member operates in the context of this camera
11 clip is consistent with how a hinge actually works.
12 This is to say, Your Honor, that the function of this
13 purported invention here requires the hinge
14 functionality.

15 It defines this as being hingedly attached,
16 the hinge element. The very object and function of this
17 invention shows that the hinge function is central to
18 the definition, and the Court saw the animation of the
19 way in which this moves from the table to the laptop
20 computer. The way it works is consistent with a
21 construction that requires taking into account the hinge
22 functionality.

23 We got some other animations, Your Honor,
24 that I think will illustrate this point.

25 Is it possible to animate this?

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1 This shows, Your Honor, where the hinge
2 member is located in the -- in the device that we've
3 been animating and illustrating here. That's the hinge
4 member there, and it's attached to the support frame,
5 and on top, not part of the invention, rests the -- the
6 camera part of the device. So that's -- that's where
7 the focus is, Your Honor, is on that hinge member and
8 how we ought to construe that.

9 This compares, Your Honor, the animation
10 we've provided, the Court will see compared to exactly
11 what the function of a hinge is and how a hinge rotates
12 about that one axis of rotation. The Court will see the
13 door and the hinge on the left and then on the right the
14 camera rotating about the second axis of rotation
15 swinging as a hinge.

16 A hinge is a hinge, Your Honor, and
17 Plaintiff's contradiction -- construction contradicts
18 the plain and ordinary meaning of the term hinge. That
19 proposed construction by Plaintiff has actually changed.
20 It was one thing in the original brief, and it was
21 something slightly different in the reply.

22 I think that first proposed construction,
23 Your Honor, made clear what the object, what the intent
24 of Plaintiff's construction is, which is really to take
25 this invention beyond what the claims describe, what the

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1 specification taught, which is in every case rotation
2 about a single axis, whether it's the first axis of
3 rotation or the second axis of rotation. Whether it's a
4 pivot joint, Your Honor, or a hinge joint, it's always
5 one axis of rotation. I think this shows as much as
6 anything that the original intent here in the
7 constructions advanced by Plaintiff is trying to expand
8 this to broaden this beyond anything the patent ever
9 claim or ever taught.

10 The ordinary meaning of hinge is, in fact, a
11 joint that only permits motion about a single axis and
12 including multiple axes as Plaintiff originally tried to
13 do or perhaps its revised proposed construction would
14 allow contradicts that understanding, effectively
15 erasing hinge from the claims.

16 We did provide examples, Your Honor, of ways
17 in which a full rotation does not in any way address the
18 term hinge in this -- in this term that needs to be
19 construed. The pin wheel is one, the turn table is
20 another. The fact that something is joined to something
21 else for rotation in no way describes a hinge. That is
22 not sufficient and no way gets at the meaning in context
23 in the context of this patent and the claims, and what's
24 taught in the specification, all the intrinsic evidence
25 clearly shows that what's required here is a hinge and

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1 not just something -- some vague reference to rotation.
2 To construe the term that way would create a great deal
3 of unwarranted and unnecessary ambiguity, Your Honor.

4 The argument was made in the briefs, Your
5 Honor, that perhaps what we really have here is an
6 example of a -- you know, a purported inventor being his
7 own lexicographer, and, Your Honor, just to be clear,
8 that case law does not -- does not allow, as Plaintiff
9 would do here, the patentee to take and try to define a
10 term such as hinge, which is commonly known and
11 understood and has an ordinary meaning, and define it in
12 a way that is inconsistent with -- not just inconsistent
13 but completely fundamentally compatible with the term
14 hinge by excluding that from the definition.

15 The Eon case is a recent case, Your Honor,
16 that was decided by -- by this Court in which I think
17 similar relationships were raised, and as there, here,
18 no clear definition of hinge is provided that would
19 suggest that it means anything other than what the claim
20 asserts and what the specification teaches, which is the
21 working of a hinge.

22 The facts here are that every use of hinge
23 member in the claims in the specification is consistent
24 with the ordinary understanding of exactly what a hinge
25 is and how it operates.

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1 There is a claim differentiation argument
2 that I think was alluded to, as well, Your Honor, and it
3 is that, you know, there's a difference between
4 rotatably attached and hingedly attached. Hinges
5 rotate; pivots rotate. There's no fundamental
6 inconsistency between rotatable attachment in the
7 working of a hinge. The question is how that happens,
8 and I think the discussion about rotatable attachment
9 will speak to that.

10 But, you know, the point we want to stress,
11 Your Honor, in every instance where hinge or hingedly
12 attached is used to describe how an object is joined at
13 the hinge member, the object is simultaneously described
14 as being able to rotate about a second axis. That's --
15 there's rotation here, but it's rotation as a hinge
16 rotates.

17 And hinge member, I'll just emphasize this
18 point again and rest with this, must require, Your
19 Honor, some acknowledgement that the hinge member is
20 going to involve the workings, the operations, and the
21 term hinge and not to define that term in a way that
22 excludes and in no way acknowledges the term hinge would
23 be fundamentally wrong, Your Honor.

24 THE COURT: Well, what about their argument
25 that Figure 4 and you're reading out Claim 8, you're not

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1 providing for the possibility that a hinge member
2 includes a pivot element, pivot element 80, what about
3 that?

4 MR. ZARIAN: I think that relies on their
5 understanding that our construction of rotatably
6 attached is somehow fundamentally inconsistent with the
7 workings of a hinge, and I think we argue, Your Honor,
8 is that -- that hinges rotate, as well. They rotate
9 about a single axis, and a swinging motion is rotation
10 about an axis of rotation.

11 I think that's -- I heard that argument that
12 was made, but I don't understand it, Your Honor. I
13 don't think we read out any preferred embodiment here.
14 All we're saying is that, moreover, Your Honor, whether
15 or not there's a pivot function allowed for at the top
16 where the cam -- webcam attaches, there must be a hinge,
17 and that's exactly what the preferred embodiment shows.
18 There's a hinge at the bottom which rotates about the
19 second and allows the rotation of the support frame
20 about the second axis of rotation.

21 So -- so there must be a hinge and the hinge
22 member, and whether or not there's also a pivot function
23 or, again, I think perhaps what they're alluding to is
24 some -- they're relying on what they think we take
25 rotatably attached to mean and somehow that

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1 excluding hinge -- that's not correct, Your Honor.

2 That's not our view of that. Hinges do rotate.

3 THE COURT: Okay. Well, go to, I guess,
4 Claim 19. What's the difference between hingedly
5 attached in the way you're describing it and rotatably
6 attached and the way you're describing it?

7 MR. ZARIAN: Your Honor, we wrestled with
8 this question, too. In all candor, this is the only
9 claim in which that distinction is made. All of the
10 other independent claims use rotatably attached both in
11 the first element and in the second element, and there's
12 a difference in the language there. We've cited cases
13 that -- that teach, Your Honor, that the fact that, you
14 know, there's different wording doesn't necessarily mean
15 that there's a different definition in terms of the
16 scope of the claim.

17 And maybe more to the point, you know, with
18 respect to whether or not that excludes or includes
19 certain matters in terms of how we define hinge, I mean,
20 this maybe goes more to the question of rotatably
21 attached. They made a claim differentiation argument
22 with respect to rotatably attached on this point. But
23 with respect to the definition of hinge, Your Honor, I
24 don't believe this has any impact on the proper
25 definition, which must -- must mean hinged member in

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1 particular must include and account for the presence of
2 a hinge. That's our point with respect to hinge member.

3 This is the point perhaps that goes a little
4 bit more to -- and I think they've used it to argue for
5 their construction of rotatably attached, and I do want
6 to address that, Your Honor. With respect to hinge
7 member, Your Honor, that's -- that's our particular
8 focus. It's a very discreet element. It's a very
9 commonly understood term. Under all the circumstances,
10 the teachings, and the claims as specifically set forth,
11 what we're saying is a hinge is a hinge, and whatever
12 definition or construction the Court settles on must
13 include and not exclude a hinge. That's our position,
14 Your Honor.

15 THE COURT: Okay. Well, all right. Okay.
16 Rotatably attached, then, or any response to hinge
17 member, brief response if you desire.

18 MR. EDMONDS: We -- we will take the Court's
19 comment brief -- brevity here.

20 So -- and what I heard counsel say was, and
21 I think it's telling, in every case it's one axis, and
22 I -- and I think that's -- their argument -- the
23 language they're proposing for the Court is to say that
24 the claims are limited to that, and that's just simply
25 not what the language of the claim says. That's just an

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1 extra limitation, restriction they're trying to build in
2 there.

3 And I think there's -- you know, there's a
4 difference, as the Court is well aware, between a
5 preferred embodiment and what's claimed. And what's
6 claimed is rotatable attachment, and the Court asked the
7 right question. What's the difference between rotatable
8 attachment, and what's the difference -- and hinged
9 attachment?

10 A similar question would be what's the
11 difference between a pivot element and a -- and a hinge
12 element. Clearly, those things are different. And
13 rotatably attached, as we pointed out in our brief, is
14 broader than a hinge joint. There are -- there are
15 pivot joints, there are ball and socket joints, there
16 are saddle joints, there are all kinds of joints that
17 provide for rotatable attachment. And the restriction
18 that the -- yeah, that the Defendants are trying to do
19 is to try to say that -- that rotatable attachment is to
20 be read out of the claims.

21 Those are our -- go ahead, Your Honor.

22 THE COURT: Okay. Well, I guess my
23 overall -- overall question is -- I just want to ask you
24 again. You've mentioned this, but the concern that you
25 are reading hinge out of the claim, it's there, it's, I

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1 think, a well-understood term.

2 Now, it says that -- Claim 1 says, a hinge
3 member adapted to be rotatably attached to the camera.
4 So I'm not so sure that that rotatably attached term
5 means that it's not a hinge. It's adapted to be
6 rotatably attached. Then it goes on to say that the
7 support frame is rotatably attached.

8 Now, their position, as I understand it, I
9 think, is that, well, hinge, rotatably on the hinge --
10 it's rotating on the hinge. On that -- I think the
11 hinge and single axis go together. When you've got a
12 hinge, they're saying you got one axis. They're saying
13 we can't go beyond that to ball and -- ball and socket
14 joint, that kind of thing, because then you're getting
15 away from hinge. You're now rotating on different axes.

16 I mean, it all goes back to hinge, and my
17 concern is, is that, as the Court, am I just changing
18 hinge, which is definitely there, it's not only in the
19 spec, it's in the claim itself, into something that, you
20 know, without a -- I don't think there's anywhere you
21 can point to where the intrinsic record says, hinge
22 member here or hinge includes this, this, this and this.

23 You're kind of trying to cobble together
24 from rotatably attached and -- and these sorts of things
25 that, well, it could be more than just solely a hinge.

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1 I guess, give me your best argument as to
2 why the Court departs from, you know, hinge when that's
3 clearly the word used here and enlarges it to other
4 possibilities.

5 MR. EDMONDS: Yes, Your Honor. To us, the
6 answer, Your Honor, is that the patentee used the word
7 hinge member. They didn't use the word hinge. They
8 didn't use the word hinge joint. The word hinge joint
9 is not used in the patent at all. And what we see here
10 with the preferred embodiment is -- and -- and -- and
11 that at a minimum, a hinge member needs to have -- the
12 rotatable attachment you're talking to -- and you say it
13 doesn't say that in the patent. It does. It says,
14 specifically in a preferred embodiment, that hinge
15 member 16 has pivot element 80 and hinge element -- I
16 think it's 78 or 82.

17 So what -- what they're doing is -- and what
18 the Court asked me is -- my question is what about pivot
19 element 80? We can't read that out of the -- it's --

20 THE COURT: Okay.

21 MR. EDMONDS: Yes.

22 THE COURT: Tell me what pivot Element 80
23 does.

24 MR. EDMONDS: It -- okay. A pivot, Your
25 Honor -- and I guess the best way to frame it would be

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1 when a basketball player pivots, so you don't travel,
2 you pivot on your foot. That's -- that's a pivot, okay?
3 So -- and -- and just like the record player, it -- it's
4 a spin. It's not a hinge.

5 THE COURT: Well, it's almost like what
6 we're talking about here are two different things. I
7 think they're saying, we don't think the hinge member
8 you're talking about does -- has anything to do with the
9 pivoting of the camera.

10 MR. EDMONDS: Yeah, but hinge member 16
11 includes pivot element 80 by --

12 THE COURT: Let me stop you.

13 MR. EDMONDS: Yes.

14 THE COURT: Do you -- Mr. Zarian, do you
15 agree with that, that pivot element 80 is included in
16 hinge member 16, or are they two different things?

17 MR. ZARIAN: The pivot element is simply
18 where there's a -- the webcam and the hinge member meet.
19 The point at which they attach I think is what's
20 described by -- by number 80 on that figure.

21 THE COURT: But so in answer to my question,
22 it's not part of hinge -- the hinge member is the
23 Defendants' position?

24 MR. ZARIAN: I think that -- I think the
25 hinge member has to allow for -- in fairness, it has to

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1 allow for a pivot element to be attached there. But,
2 no, the device that's described is specifically the
3 member. And what's described to rotate, I think, is
4 pretty clearly is the webcam that rotates at that point,
5 whereas, the support frame, which is part of the device,
6 rotates. That's part -- that is part of the -- of the
7 invention -- of the alleged invention.

8 THE COURT: Okay. Well, I guess -- okay.
9 Let's say it's got this pivot which allows the camera to
10 rotate, but I think their point is, is that your
11 definition of hinge member does not require a hinge,
12 which I think they're saying is required in its
13 attachment to the support frame; is that correct?

14 MR. ZARIAN: Absolutely, Your Honor, it must
15 have the hinge.

16 THE COURT: So what about -- let's go away
17 from the 80, the camera attachment, the part that
18 attaches the camera to the support frame, which I think
19 they're saying shows this sort of back and forth action,
20 a hinge on one axis. I mean, why can we -- why can the
21 Court not incorporate that into the definition of hinge
22 member?

23 MR. EDMONDS: So -- and as I understand the
24 Court, right, I understood them to say that pivot --
25 that a hinge member couldn't have a pivot element. Now

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1 they're saying it can, but it also has to have this
2 hinge element, and I think the Court's question is why
3 doesn't it have to have a hinge element?

4 THE COURT: Why doesn't it have to have a
5 hinge element?

6 MR. EDMONDS: Right. And -- and the answer
7 is that Claim 19 requires hinged attachment. The other
8 claims do not, and, in addition, Claims 8 and 17 require
9 a hinge element, and the other claims do not.

10 And the -- the -- what we see is that
11 rotatable attachment is, again, broader than hinged
12 attachment. There are all kinds of rotatable
13 attachments, and if the Court was to restrict it that
14 way, then it's an undue restriction on the claims and
15 hinged attachment becomes meaningless and hinge element
16 becomes meaningless, and that's improper claim
17 construction. And I -- and I think the key to
18 understanding it is that the patentee didn't -- they
19 said, hinge member. That's not a word in the art.
20 That's the word the patentee made up. And he didn't
21 say, hinge joint, like the Defendants keep saying.

22 So what we know from looking at the claims
23 and the structure of the claims is that a hinge member
24 doesn't have to have a hinged attachment and that a
25 hinge member does not have to have a hinge element. All

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1 that's really required in Claim 1, Claim 10, Claim 20,
2 the other independent claims is it has to be rotatable
3 attachment. That's all that the claims require.

4 THE COURT: Okay. Now, so what I'm
5 understanding you to say is, is that this hinge member,
6 this rotatable attachment to this support frame, I guess
7 it's like you say, it could be -- the attachment could
8 result in not only -- it doesn't have to be a hinge
9 joint, it could be a ball joint, it could be some --
10 some sort of attachment that allows rotation in some
11 fashion?

12 MR. EDMONDS: Rotatable attachment means
13 rotatable attachment. It's that simple. And had the
14 patentee not used hinged attachment, we might be having
15 a different conversation. But hinged attachment, I --
16 what I heard counsel say and I think it's correct, they
17 said that a -- a hinged attachment is a type of
18 rotatable attachment. We agree. But there are other
19 types rotatable attachments, too, and the claims don't
20 limit themselves, except for Claim 19, to any particular
21 type of rotatable attachment.

22 THE COURT: Okay. Anything else on this?

23 MR. EDMONDS: I think that sums it up, Your
24 Honor. Thank you.

25 THE COURT: Okay. All right. Are we moving

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1 to -- is the next thing to do is rotatably attached?

2 MR. ZARIAN: We're prepared to address that,
3 Your Honor.

4 THE COURT: Okay. Mr. Edmonds, have you
5 addressed rotatably attached?

6 MR. EDMONDS: I -- have I addressed theirs?
7 No, I was -- I was responding to hinge member.

8 THE COURT: Go ahead and move to rotatably
9 attached, and that may raise some issues I might have
10 with regard to -- I think they're really, you know, kind
11 of arguing the same thing here, but if there's something
12 specific you want to present on rotatably attached, go
13 ahead.

14 MR. EDMONDS: Yes, Your Honor. I think that
15 the rotatably attached, the difference between the
16 parties is that they're saying it's limited to one axis
17 of rotation, and that's just simply not what the claims
18 say.

19 What the claims require to infringe the
20 claim, you have to have rotatable attachment in one
21 axis, you have to have rotatably attachment in a second
22 axis. That's required to infringe the claim.

23 But what they're saying is that you -- you
24 can only have rotatable attachment in one axis. And
25 there's nowhere that the patent says that. There's

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1 nowhere in the spec, there's nowhere in the claims that
2 say that. So the question is are we going to limit
3 what's claimed here to the preferred embodiment? The
4 preferred embodiment has a pivot joint. The preferred
5 embodiment has a hinge joint on one end, a pivot joint
6 on the other end. Both of those, fair enough, are --
7 are rotating in one axis.

8 But it's -- as Phillips says, you're not
9 limited to the preferred embodiment. And the question
10 of whether somebody is limited to the preferred
11 embodiment, if somebody went around saying, the claimed
12 invention, the claimed invention, this is what the
13 claimed invention is, sometimes that happens, and the
14 Courts say, you know, you just -- you just said
15 that's the claimed invention. That's all you're going
16 to get.

17 That's not how this patent was written.
18 They're referred to as the preferred embodiments, and
19 then, of course, at -- at the end, it made -- to the
20 extent it's not -- it wasn't clear at the end of the
21 patent, the specification says that we're not limited to
22 the preferred embodiment. We're not intending to limit
23 this to the preferred embodiments.

24 And the case law we cited to the Court says
25 exactly that, that if the patentees are not limited to

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1 the preferred embodiment, there has to be a special case
2 in which they be limited to the preferred embodiment.
3 Here they're not, and this is very much on point to the
4 case we cited to the Court. It's very much on point to
5 Phillips for that matter.

6 But I think that's -- that's the issue,
7 and -- and with the webcam we have, I think it
8 illustrates the point. This -- this webcam, as we can
9 see, it rotates in an axis. So what -- what the
10 Plaintiff would say is you have an axis of rotation
11 here, you have another axis of rotation that is
12 perpendicular to it, and we say it infringes.

13 What the Defendants say is maybe it does
14 that, maybe it doesn't, but they say but it also moves
15 in other directions, and because it does more than what
16 the claim requires, it doesn't infringe. The word
17 comprising is including but not limited to.

18 So the only way their argument works is if
19 the claim -- if the Court follows their admonition and
20 restricts the claim to mean that you can only do what --
21 what the claim absolutely requires. You can't do
22 anything else. So, for example, we have a car with head
23 lamps, they'd say, this claim is to a car. If you put
24 head lamps on the car, it doesn't infringe because
25 you're limited to a car.

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1 THE COURT: Okay. All right. Response?

2 MR. ZARIAN: Thank you, Your Honor. A
3 couple of quick points, then I'd like to move to the
4 presentation. But just -- just to distinguish, Your
5 Honor, between the discussion we had about hinge member
6 and rotatably attached, our point with respect to hinge
7 member, and I think the fundamental difference between
8 parties, is that we -- we submit that whatever else the
9 hinge member does, it could have 20 attachments, it's
10 got to have a hinge. There's got to be a hinge on the
11 hinge member, and if it doesn't, it's got to have a
12 hinge member. That's -- that's our construction that
13 we've advanced. It requires a hinge joint. It's as if
14 the claim required head lamps on a car and there were no
15 head lamps. That's where they're taking this claim in
16 terms of an attempt to broaden it.

17 The issue with respect to rotatable
18 attachment does turn on -- on the construction -- the
19 difference with the two constructions. Defendants
20 submit that rotation about an axis means rotation about
21 an axis. There must be a single axis. That's all the
22 patent teaches, that's all that's disclosed, and there's
23 no teaching or any suggestion of any kind in terms of
24 these claims and this specification of this patent of
25 anything else.

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1 Now, much has been made about the fact that
2 there's a reference at one point to a pivot joint. One
3 thing that needs to be clarified, Your Honor, a pivot
4 joint still rotates about a single axis. It's -- you
5 know, it's the spinning at the top. It spins about a
6 single axis. That's what a pivot does. The hinge joint
7 also pivots about a single axis.

8 I mean, we've seen suggestions here, even in
9 oral argument, about ball joint and saddle joints, and
10 there's just absolutely nothing, nothing at all in this
11 patent that would disclose any kind of a device that
12 incorporates that kind of functionality. That's not
13 what was claimed, and that's not what was taught by
14 these patents.

15 These patents have a physical meaning, and
16 our -- our construction is faithful to -- to what was
17 disclosed and what was claimed in this patent. There
18 was an argument made in the papers, Your Honor, about,
19 you know, this being a disclaimer perhaps or disclaimer
20 issue, and there is no disclaimer here. So just to be
21 clear, Your Honor, we've not argued a disclaimer, but,
22 you know, in terms of the other point made in the reply,
23 there's not teaching that rotation was restricted to a
24 single axis. In fact, that's not correct. The only
25 teaching here is about rotation about a single axis.

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1 I'm going to get later in the argument, Your
2 Honor, to the issue that was made about comprising,
3 but -- but to move ahead to that, Your Honor, what
4 they'd like to do is reach down in the claims and be
5 able to take out the limitation to rotation about a
6 single axis. That's -- that's not permitted, and that's
7 not what the construction ought to allow here.

8 As used in this claim -- in these claims and
9 as taught in the specification, the term describes a
10 specific type of rotatable attachment, and, Your Honor,
11 in every case -- in every single case, that is, it shows
12 and describes and claims rotation about one axis, one
13 axis of rotation.

14 The -- we've included some of the authority
15 we had in our briefs, Your Honor, but we don't rely on
16 disclaimer, and we instead seek to give rotatable
17 attachment its ordinary meaning in the context of the
18 claims and in the context of the specification. And the
19 intrinsic record here is completely consistent with our
20 construction and inconsistent with any reading that
21 would allow for all these exotic other types of joints
22 not taught and not claimed in the patent.

23 In this case, wherever the term rotatably
24 attached is used to describe how two objects are
25 connected, they're always described, always, as moving

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1 about a single axis. The 21 claims here described
2 objects that are rotatably attached, again, in every
3 single case moving about a single axis of rotation, no
4 deviation from that.

5 The rotatable -- rotatably attached, as used
6 here, whenever that term is used to describe how objects
7 are connected, always describe as moving about a single
8 axis. Here we have some language in the specification,
9 and here we show the rotation above that -- about that
10 vertical axis.

11 THE COURT: Well, let me ask you this, I
12 mean -- I mean, the camera is not necessarily always
13 going to be sitting like this. I mean, if the camera
14 goes forward or back, I mean, that's not the same axis,
15 that's a different axis, and wouldn't the camera go to
16 rotate around that axis?

17 MR. ZARIAN: Well, we don't think that's
18 what the -- what the patent teaches or discloses or
19 explains. It talks about the two axes. I think at one
20 point it refers to them as generally perpendicular, and
21 there's a -- even counsel here today referred to a
22 horizontal axis and a vertical axis.

23 I mean, what is -- what is shown, what is
24 taught, and what is claimed is -- is an axis about which
25 there is rotation and another axis, a second axis about

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1 which there is also rotation. In each case, the
2 rotation is about a single axis, and there's nothing
3 else taught in this patent and nothing else claimed,
4 Your Honor. We think that to try to broaden the claim
5 beyond that is -- is improper and should not be
6 permitted.

7 The -- you know, we've got a few more slides
8 on this, but not to belabor the point, but, again,
9 whether it's pivoting that takes place as shown here or,
10 you know, the rotation is about the second axis, in
11 every instance, it's about a single axis of rotation.
12 We've animated to illustrate, you know, how that
13 occurs, and maybe we can play this for the Court in
14 terms of one illustration of this rotatable attachment,
15 again, about a single axis. That's what the claims
16 speak to and what the patent teaches is -- is rotation
17 about a single axis. Here we see the rotation about the
18 second axis.

19 THE COURT: Yeah, I mean, I get that. I
20 think the only way, though, that you get that out of
21 this claim is -- and this is a question I'm going to
22 have for the Plaintiff is, is that it says that the
23 first axis and second axis are general -- generally
24 perpendicular.

25 I mean, I think the second axis is always

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1 going to be essentially horizontal. I guess my question
2 would be when the thing pivots, you know, maybe that's
3 still generally perpendicular. I'm not sure I'm getting
4 why that when it says first axis, that means it is just
5 set in stone, you know, one axis, you know. I mean, I
6 don't know why it can't pivot even in the way you're
7 describing it. I think they would dispute even that
8 it's that narrow, the configuration of the camera and
9 the clip, but why that's restricted to just that
10 one -- one axis.

11 MR. ZARIAN: Well, Your Honor, in the same
12 way that, you know, the second axis I think is clear and
13 clear to the Court I submitted -- okay. You know, the
14 second axis is defined not just an axis, but it's the
15 second axis. The first axis is defined the same way.
16 The camera is said to rotate and claimed to rotate about
17 a first axis of rotation relative to said hinge member.
18 That is language that's used consistently throughout,
19 and I don't think it lends itself to movement or
20 variation or an infinite number of axes or many axes. I
21 think that's not a fair reading of the language that's
22 used consistently throughout the claims and the
23 specification.

24 THE COURT: But isn't the first
25 distinguishing it from the second? I mean, I'm not sure

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1 that first means locked in, that's the only one we're
2 referring to, but it's an axis that's different from the
3 second.

4 MR. ZARIAN: And I think Ms. Lu would like
5 to address if it please the Court.

6 THE COURT: Okay. Go ahead. Briefly, and
7 then I want to go to the Plaintiff.

8 MS. LU: Yes, Your Honor, just to clarify, I
9 think we're all talking kind of about the same thing,
10 but there is a little point of semantic difference here.

11 So there -- the term that we're talking
12 about here is rotatably attached. That phrase describes
13 how two things are connected together. Now, once these
14 two things are connected together, they may permissibly
15 move in a certain way. But essentially what we're
16 talking about is the type of attachment. Now, we're not
17 talking about what the word rotate means in the
18 abstract. If we go back into the claims here,
19 Subparagraph 1 of Claim 1 describing the hinge member,
20 it says that the hinge member is adapted to be rotatably
21 attached to the camera, and then when it is so attached,
22 it rotates about an axis.

23 And what Defendants are trying to say here
24 is that when you're rotatably attached, you're -- the
25 motion that's permitted by that type of attachment is

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1 rotation about an axis.

2 Now, Plaintiff will make an argument here
3 like, well, there's a first axis, and there's a second
4 axis, and there may be different axes, but if
5 Plaintiff's construction is -- the way that Plaintiff
6 seems to be making their argument is that it should also
7 include different types of joints, like ball joints,
8 Your Honor, motion about a ball joint is motion about
9 a spherical plane around a point around a center.
10 That's -- there's no axis. Defendants are just saying,
11 as in the claims, that when you have a rotatable
12 attachment, you move about an axis. You can have
13 different things attached --

14 THE COURT: Well, I think that -- I think
15 that the claim talks about rotating about a first axis.
16 I think you've said an axis. That's different from a --
17 one axis. Now, I'm not sure the Plaintiff can get away
18 from the fact, even though they've defined rotatably
19 attached without reference to an axis, that it says
20 rotating about a first axis. So I would -- they're
21 going to have to deal with that. I'm not sure -- I
22 mean, their argument as to ball and joint, you know, I
23 mean, we're going to have to look at that and reconcile
24 that with -- first with axis, which I think is clearly
25 called for in the claim. But I think an axis is

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1 different from one axis.

2 So let me hear from the Plaintiff on this.

3 And I guess let me ask you, Mr. Edmonds, would you have
4 an objection to the rotatably attached term being such
5 that connected such that the connected object --
6 something like this, connected such that the connected
7 object is capable of being rotated around an axis, an
8 axis of rotation or something of that -- along that
9 line? What I'm saying is drop the one axis, but put
10 axis of rotation or rotated around an axis in there.

11 MR. EDMONDS: We don't object to that as
12 long as it's not interpreted back as being one. I mean,
13 that's the point. And I think that's a point well
14 taken. But the question is whether that is needed, and
15 when -- and I don't think it fundamentally changes
16 anything, but just in terms of good and correct claim
17 construction, the first axis of rotation and second axis
18 of rotation are already claim limitations. So whatever
19 infringes has to meet those. That's not -- we're not
20 trying to read those limitations out of the claim.

21 We're just saying that there's no reason to
22 shoehorn those into rotatably attached. There are
23 already separate limitations in the claim.

24 THE COURT: Okay. Well, let's go to my --
25 my question about this -- this -- that the camera goes

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1 back and forth. Let's say the camera goes forward. Is
2 it your position that first axis -- the rotation of the
3 camera is -- is around an axis running through the
4 center of the camera, I guess, is my question? These
5 axes has to be perpendicular, generally perpendicular,
6 correct?

7 MR. EDMONDS: The -- the first axis and the
8 second axis do have to be generally perpendicular.

9 THE COURT: Okay. Well -- well, their
10 question is it's one axis. If you -- if you look at
11 this figure -- and what I'm saying is I can see a
12 situation where the thing would go off of that axis
13 slightly but still rotate. Am I --

14 MR. EDMONDS: You're absolutely correct,
15 Your Honor.

16 THE COURT: Okay. So you're -- that to you
17 would still meet the elements of the claim as being a
18 generally perpendicular axes?

19 MR. EDMONDS: Yes, Your Honor.

20 THE COURT: Now, we still have this argument
21 about hinge or what's required there as far as -- I
22 mean, I guess the question is can the camera possibly,
23 as you say, you know, pivot or turn or rotate on a ball
24 joint or -- or something along those lines? I think
25 that's still, you know, a question, but I'm just trying

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1 to get to this understanding of rotatably attached.

2 You know, I have real concerns -- real
3 questions about defining this term at all. It seems
4 understandable in and of itself. The claim language has
5 many of the things that are asked to be placed into the
6 definition. I have real questions about whether this
7 requires a definition at all.

8 MR. EDMONDS: The Plaintiff would concur, if
9 the Court says ordinary meaning, we agree, because as I
10 said, the other limitations that they're expressing
11 concerns about are -- and the other structure, the other
12 context is already there in the claim. We concur.

13 THE COURT: All right. I guess let me go
14 back, Mr. Edmonds. I just want to cover one more thing
15 before we adjourn here.

16 Going back to hinge member for a moment, I
17 guess I want to go back to this Claim 19, hingedly
18 attached and rotatably attached. I guess this is one of
19 those questions that Courts ask sometimes to Plaintiffs'
20 lawyers, and maybe there's no good -- good answer, but I
21 have a real concern with why the patentee would have
22 used hinge member. Why not use member, connection, I
23 don't know, any number of different things, because when
24 you say that, well, hingedly is different from
25 rotatably, well, the question then becomes, but you said

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1 hinge member.

2 Now, you got a hinge member that's rotating,
3 and you got a hinge member that's acting on a hinge. I
4 mean, it's almost like what does it mean if, oh, yeah,
5 now a hinge can rotate, unless it means, as the
6 Defendants seems to be saying, well, yeah, a hinge
7 rotates around, you know, an axis.

8 You know, I just -- I don't really know --
9 it's difficult for the Court to see a path to where you
10 can define hinge member in such a way that doesn't
11 require a hinge. I mean, what you proposed is it just
12 joins to another. Well, I mean, I think there's got to
13 be some pretty strong support for the idea that, you
14 know, that doesn't need to have an element of a hinge in
15 there.

16 I mean, if you take the shoe on the other
17 foot, you know, if the Defendant were saying, oh, well,
18 this doesn't -- I mean, I see Defendants all the time
19 say, well, even though it says this, we want to define
20 it as this. And it's like you're doing -- you're doing
21 the same thing here, and I just -- I'm having difficulty
22 with, you know, defining this in -- in a way that does
23 not communicate what it seems is clearly called for.
24 Again, there could have been any number of things used,
25 but there wasn't, there was -- the hinge was used.

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1 MR. EDMONDS: If anything, Your Honor, and
2 if I may borrow -- and I think we -- we feel our
3 construction is correct, and maybe if Court reflects, it
4 might agree, but if it doesn't, I think that our primary
5 concern with the Defendants' construction is that this
6 reading a hinge joint into it is entirely consistent
7 with a rotatable attachment and a rotatable attachment
8 being different than a hinged attachment.

9 What we see with this webcam is a good
10 example. There's -- the -- the hinge member here has a
11 hinged attachment, and everybody agrees. It also has a
12 rotatable attachment that's not a hinge. I think if the
13 Court felt that it had to impose some hinge-like
14 limitation on it, then the thing would be -- then the
15 thing to do would be to say that the hinge member needs
16 to have at least a pivot element or some kind of hinge
17 to it, but it's not limited to that. That -- that's the
18 problem.

19 You're saying our construction -- our
20 construction doesn't have a hinge, and we're saying, but
21 their construction excludes rotatable attachment, maybe
22 that's the middle ground the Court may find.

23 THE COURT: Well, I certainly agree. This
24 is something I struggled with before the hearing was is
25 this idea that the hinge member is clearly adapted to be

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1 rotatably attached. So I think there's got to be some,
2 you know, rotatable attachment. You know, I don't see
3 how that's being -- would be an argument, but it may
4 also need a -- a hinge, a pivot-type of -- hinge-type of
5 joint, but I'm going to look at this and review the
6 briefing and your arguments and reach a conclusion.

7 MR. ZARIAN: If I can address one very brief
8 point, Your Honor. With the respect to the last
9 suggestion that was made, a pivot is -- is different
10 from a hinge and -- and just to highlight that point,
11 Your Honor, there's no solution. It really doesn't fix
12 the problem to define a hinge that pivots any more than
13 it, you know, would be appropriate to exclude -- it
14 still excludes hinge and makes -- and doesn't account
15 any way for hinge. So we submit, Your Honor, that a
16 hinge is a hinge and requires that the word hinge be
17 accounted for in the construction.

18 THE COURT: Okay.

19 MR. EDMONDS: If I may, Your Honor, that's
20 not what I meant to say. If I said it, I apologize.
21 What I'm saying is on this one, a hinge member does have
22 a pivot element, it does have a hinge to it, but that
23 doesn't mean that it can have another type of rotatable
24 attachment, and that's really where the big problem is,
25 because the preferred embodiment has another type of

CLAIM CONSTRUCTION HEARING

1 rotatable attachment.

2 THE COURT: Okay. Okay. All right. Well,
3 thank you for your arguments. We'll get you a ruling on
4 this as soon as we can.

5 Anything further from the Plaintiff?

6 MR. EDMONDS: Thank you, Your Honor. Thank
7 you for your indulgence.

8 THE COURT: Anything further from the
9 Defendants?

10 MS. LU: Just one final comment. Plaintiff
11 seems to like playing with this camera and saying, look,
12 there's a hinge. Look, there's something. And we need
13 not belabor the point, but, Your Honor, when you go back
14 and look at the claims, it states that the hinge member
15 is the piece to which the camera attaches and not to
16 which the support frame attaches. I would request that
17 Your Honor not give too much credence to the particular
18 ways Plaintiff's hands were manipulating this particular
19 model, and, also, ask yourself if this means anything,
20 what -- what the Plaintiff was doing with this camera,
21 where does the hinge member begin, and where does it
22 end? Where does the support frame begin, and where does
23 it end?

24 THE COURT: Okay.

25 MS. LU: Thank you.

CLAIM CONSTRUCTION HEARING

1 THE COURT: All right. Thank you for your
2 arguments, and we're adjourned.

3 COURTROOM CLERK: All rise.


4 (Hearing concluded.)
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CLAIM CONSTRUCTION HEARING

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

March 2, 2012


SHELLY HOLMES
Deputy Official Reporter
State of Texas No.: 7804
Expiration Date: 12/31/12

Date

Job No. 98620